Office Supreme Court, U.S.
FILED
JUL 3 1957
JOHN T. FEY, Clerk

LIBRARY
SUPREME COURT, U.S.

No. 1054

# In the Supreme Court of the United States

OCTOBER TERM, 1956

HELEN I. WATSON, PETITIONER

*v.*

THE UNITED STATES

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS*

## MEMORANDUM FOR THE UNITED STATES

J. LEE RANKIN,
*Solicitor General,*
*Department of Justice,*
*Washington 25, D. C.*

# In the Supreme Court of the United States

OCTOBER TERM, 1956

---

No. 1054

HELEN I. WATSON, PETITIONER

*v.*

THE UNITED STATES

---

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS*

---

## MEMORANDUM FOR THE UNITED STATES

This suit was instituted by petitioner, a former probationary employee of the War Department, to recover back salary from the date of her allegedly wrongful discharge in 1947. Her petition in the Court of Claims alleged that her dismissal violated both Civil Service and Army Regulations in that no reasons for her dismissal were given her at the time of her separation (R. 5-7).[1] The Court of Claims, however, dismissed her petition on the ground that a violation of these regulations did not create any rights in the employee which would give rise to a cause of action

---

[1] She was subsequently given detailed reasons for her dismissal. See *infra*, p. 3.

against the United States (Pet. App. 1-51). The court noted that the Lloyd-LaFollette Act [2] was inapplicable to petitioner because she was a probationary employee,[3] and that therefore Congress had in no way restricted the Executive's power to remove this non-veteran probationer. Two judges dissented.

Both the initial opinion of the Court of Claims and its opinion on rehearing [4] were written without benefit of this Court's decision in *Service* v. *Dulles*, No. 407, 1956 Term, decided June 17, 1957. The *Service* case invalidated a Foreign Service officer's dismissal on the ground that an applicable State Department regulation had been violated, in spite of the fact that an Act of Congress [5] gave the Secretary of State absolute discretion to discharge any Foreign Service officer of the United States.

There are several distinctions between the instant case and *Service* v. *Dulles, supra*. Perhaps most significant is the fact that in the *Service* case the dismissal involved a loyalty or security background; the instant case involves a probational employee who had been employed somewhat less than six months [6] when

---

[2] Act of August 24, 1912, Section 6, 37 Stat. 555, as amended, 5 U.S.C. 652.

[3] See *Nadelhaft* v. *United States*, 132 C. Cls. 316.

[4] Petitioner's motion for a new trial was treated as a motion for rehearing.

[5] Section 103 of Public Law 188, 82d Congress, 65 Stat. 581 (the so-called McCarran Rider).

[6] Petitioner received her probational appointment as a clerk-typist, CAF-2, in the Finance Department of the Army at Fort Bliss, Texas on October 10, 1946 (R. 12). She was sent a notification of personnel action on April 14, 1947, terminating her employment as of April 25, 1947 (R. 17).

she was notified that she was to be separated for "conduct not satisfactory to the Agency, during probational period" (R. 17).

Moreover, when the Army determined that it may have failed to comply with its own regulations requiring reasons to be given, it wrote petitioner in detail of the reasons for her dismissal (R. 27).[7] This letter also accorded her a right to reply (R. 27). There is nothing in the record, however, to indicate that she took advantage of this opportunity.

Finally, a probationary employee has no statutory protection in that status. On the contrary, the essence of such status is that separation may be effected without formality if for *any* reason it is determined that the probationer should not be accorded a permanent appointment with the statutory protection that comes with such an appointment. This is in contrast to the facts in the *Service* case where, but for the McCarran Rider,[8] the employee would have had the elaborate protection of the Foreign Service Act of 1946.[9]

However, inasmuch as the Court of Claims has not had an opportunity to evaluate these distinctions in the light of this Court's decision in *Service* v. *Dulles, supra*, the Government acquiesces in the entry of an

---

[7] This letter, written six months after her dismissal, notified petitioner that her supervisor had reported that petitioner had complained that the work assigned to her was beneath her ability; that she was indifferent to her work and insisted that any criticism of her work by her superiors be in writing; that she had become a disturbing influence in the office, complaining to other employees as well as to her superiors; that this situation had continued even after her shortcomings had been brought to her attention (R. 27).

[8] See note 5, *supra*.

[9] Sections 637, 638, 60 Stat. 1016, 22 U. S. C. 1007, 1008.

order reversing the judgment below and remanding the case to the Court of Claims for reconsideration.

Respectfully submitted,

J. LEE RANKIN,
*Solicitor General.*

JULY 1957.